

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, APRIL 1, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Gerald DeMello

Mr. Timothy Johns
Mr. Toby Martyn
Mr. Ron Agor

STAFF

Mr. Warren Wegesend, Land
Mr. Paul Conry, DOFAW
Ms. Martha Yent, Parks
Mr. Pat Costales, DOFAW

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, Parks
Mr. Richard Rice, DOBOR

OTHER

Mr. William Wynhoff, Deputy Attorney General
Mr. Frank DeLuz, D-5
Mr. Garret Matsunami, D-11
Dr. Jonathan Scheuer, D-9
Mr. Max Graham, D-7, K-2
Ms. Moana Gorai, E-1
Ms. Lena Soliven, E-1
Mr. Ervin Kahala, E-1
Ms. Jocelyn Gaovoy, K-2
Mr. Bob Levak, K-5
Mr. Blaine Kobayashi, K-3

Mr. Doug Smith, D-6
Mr. Barry Mizuno, D-9
Dr. Jim Anthony, D-9, E-1
Ms. Tammie Ackerman, D-2
Mr. Carlton Gorai, E-1
Ms. Leimomi Hawkins, E-1
Ms. Adela Johnson, E-1
Mr. Don Clegg, K-5
Mr. Tom Isan, K-5

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of April 1, 2005

Member Martyn recused himself.

Unanimously approved as submitted by the remaining board members (Johns/Yamamura).

Item D-5: Cancellation of Revocable Permit No. S-6536 to Frank De Luz Jr. and Virginia R. De Luz and Issuance of Month-to-Month Revocable Permit to Frank De Luz, III for Pasture Purposes; Kapuualei, Hamakua, Hawaii, TMK: (3) 4-3-06:05 & 4-3-14:01.

Warren Wegesend, Administrator of the Land Division reminded the Board in 1995 the Board authorized the issuance of a Revocable Permit for pasture purposes to Frank De Luz, Jr. and Virginia R. De Luz. The permittees have since passed away and their son, Frank De Luz III has continued the family owned business and is requesting the cancellation of the permit and reissuance of a permit for pasture purposes in his name. Mr. Wegesend recommended the Board authorize the issuance of a revocable permit to Frank De Luz III covering the subject area for pasture purposes.

Frank DeLuz III was present.

Unanimously approved as submitted (DeMello/Johns).

Item D-6: Acquisition of Private Lands and Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Protection of Endangered and Threatened Species Found in the Manana Valley Watershed, Honolulu, Oahu, TMK: (1) 9-7-25:02 & (1) 9-7-26:02.

Mr. Wegesend communicated that the Division of Forestry and Wildlife (DOFAW) is requesting authorization to acquire approximately 1,625.54 acres of land located in the Manana section of the Ewa Forest Reserve of Waimano. At the subject site 20 rare plants have been identified with the expectation of more plants being discovered. In 2004, DOFAW was awarded \$900,000 from the U.S. Fish and Wildlife Services and with a minimum of 25% in-kind matching funds will use that money towards the acquisition of the property and the implementation of a three-phase project. Mr. Wegesend disclosed the landowner has obtained an appraisal report which estimates the market value of the subject site to be \$1,580,000 however he has agreed to sell the land to the State for \$900,000 which reflects a 43% discount from the appraised value. Additionally, the landowner has agreed to apply this discount to the required 25% in-kind match, which has also been approved by the U.S. Fish and Wildlife Service. Lastly, Mr. Wegesend made it known that the private landowner has a familial relationship with a current DOFAW staff member. Accordingly, to avoid any appearance of inappropriateness, this

staff member has voluntarily excluded himself from all acquisition meetings and discussions. Mr. Wegesend recommended the Board authorize the acquisition of the subject private lands and approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Land and Natural Resources, Division of Forestry and Wildlife.

The Board questioned if the management plan for the subject area would be brought before the Board for approval.

Paul Conry, Administrator for DOFAW informed the Board they'd bring the management plan for the subject area before the Board for approval. He also suggested additional conditions to the recommendations: 1) the acquisition would be contingent on the availability of Federal Grant money; and 2) DOFAW satisfactorily complying with relevant Federal grants requirements.

The Board amended the Recommendation Section as follows:

- 3. The acquisition of the subject parcel shall be contingent upon the availability of Federal Grant monies and the Division of Forestry and Wildlife satisfactorily complying with relevant Federal Grant requirements.**

Unanimously approved as amended (Johns/DeMello).

Item D-11: Cancellation of the Option to Purchase and Quitclaim the State's Interest in the Mililani-Mauka Exploratory Well Nos. 2858-01, 02, 03 to Castle & Cooke Homes Hawaii, Inc., Waipio, Oahu, TMK: (1) 9-5-03:11 por.; and Rescind Prior Board Action on June 27, 1986, Item F-8, Acquisition of Land for a Proposed Well Site and Roadway Easement Situate at Mililani, Oahu.

Mr. Wegesend let it be known it is necessary for the title of the subject land to be cleared in order for the Department of Water to make long-term investments for maintenance. Mr. Wegesend noted Castle and Cooke have agreed to donate the land and its improvements to the Board of Water Supply. To compensate the State for it's cost in drilling the three wells, Castle and Cooke has committed to granting water allocations to the State in an amount of 100,000 gallons per day at no charge. Mr. Wegesend recommended the Board Cancel the Right of Entry and Option to Purchase agreement, Quitclaim any and all interests of the State in the Mililani-Mauka Exploratory Wells and Rescind the prior Board action of June 27, 1966.

Unanimously approved as submitted (Johns/Yamamura).

Item D-9: Lessor's Consent to Certain Subleasing and Sub-Subleasing (Mortgage in the Form of a Sale-Leaseback Financing Arrangement) of Resource Sublease and Power Plant Sublease, Non-Disturbance and Attornment Agreement and Estoppel Certificate (hereinafter

Collectively referred to as the Consent Agreement) and Partial Assignment of Sublease, Geothermal Resources Mining Lease No. R-2 (GRML No. R-2), Kapoho, Puna, Hawaii, TMK: 1-4-01:1, 3, 19, 58 and por. of 2.

Member Johns recused himself.

Mr. Wegesend indicated Puna Geothermal is the current sublessee for geothermal resources under Permit R-2. Currently they're planning to increase the existing plants capacity from 25 megawatts to 30 megawatts and in the process are arranging for \$85 million in new financing to fund the expansion and develop additional geothermal resources. Instead of conventional financing Puna Geothermal will obtain the funds through a sale-leaseback arrangement. Mr. Wegesend recommended the Board consent to certain subleasing and sub subleasing of the resource sublease and power plant sublease, consent to non-disturbance, attornment agreement and estoppel certificate and consent to the partial assignment of the sublease under GRML No. R-2 from PGV to PGV II.

Dr. Jonathan Scheuer of the Office of Hawaiian Affairs (OHA) summarized the written testimony received from his office. He told the Board due to the short notice of this item appearing on the Board agenda they did not have adequate time to review staff's submittal. Mr. Scheuer highlighted some points of concern OHA has with this item. He wanted some assurance that the submittal will not provide any adverse impacts on their beneficiaries, the calculation method will not change the revenue amount given to OHA and the county and lastly he noted the original EIS which was done 20 years ago only addressed the development of a 25 megawatt geothermal plant. Mr. Scheuer asked the Board to make a determination whether Chapter 343 compliance is required on this matter prior to making a decision on this item. In his testimony, Dr. Scheuer informed those present that OHA does not take a stand for or against geothermal development.

William Wynchhoff, Deputy Attorney General indicated the Board is empowered with making a decision on this item today without going through the Chapter 343 process. He stated that any action by the Board today will be subject to any future determination that Chapter 343 was required. Mr. Wynchhoff told the Board if he is wrong in his determination then the Board might have to revisit this issue.

Dr. Jim Anthony, Executive Director of Hawaii Laie Ikawai Association testified against the advice given to the Board by the Deputy Attorney General with regards to the determination of the need for Chapter 343 process. He noted his support for the written testimony made by OHA and the testimony of Dr. Scheuer. He asked the Board to delay making a decision on this item until the issue of a Chapter 343 process is determined.

Written testimony was received from Clyde Namuo of OHA.

The Board amended the Recommendation 1) to add the following:

- e. Any subsequent assignments of the rights demised by GRML No. 2 between PVG and PGV II to each other shall be permitted without Board's prior consent provided the parent entity and controlling interest of PGV and PGV II remain the same.

Unanimously approved as amended by the remaining Board members (DeMello/Agor).

Item D-7: Amend Prior Board Action of November, 5, 2003 (Item D-10), Grant of Term, Non-Exclusive Easement to Department of Water for Water Tank Overflow and Drainage Purposes, Waipouli, Kauai, TMK: (4) 4-4-3:within 89.

Mr. Wegesend disclosed the submittal before the Board is to increase the area of easement from 150 square feet to approximately 2,325 square feet of State ditch 7. The expansion of the easement area is to allow for overflow and drainage of the Water Tank Lot. Mr. Wegesend recommended the Board amend the prior action of November 3, 2003, Agenda Item D-10.

Unanimously approved as submitted (Agor/Martyn).

Item D-2: Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Leases to May S. Ishimoto for Private Noncommercial Piers Purposes Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-1:35.

Mr. Wegesend indicated the previous owner has since passed away and the current owner is now requesting the subject property be transferred to her name. Mr. Wegesend recommended the Board amend its prior action of August 24, 2001, Item D-29.

Unanimously approved as submitted (Johns/Martyn).

Item K-2: Request for Public Hearing and Small Business Impact Determination Petition to Amend Title 13, Chapter 5, Hawaii Administrative Rules (HAR), for the Haena Hui Partition, Haena, Island of Kauai.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) let it be known he is seeking the Board's approval to proceed with holding a public hearing in order to amend Section 13-5-41 of the Hawaii Administrative Rules (HAR) and to make a Small Business Impact determination regarding changing the subject rule. Mr. Lemmo pointed out the petitioners are asking to amend the rules to provide for exceptions to the 10,000 square foot minimum lot size requirement within the Hanalei Hui partition. As background information he let it be known the petitioner, the Ochwat's submitted a Conservation District Use Permit for a single-family residence but their

request was rejected because the size of their lot was less than 10,000 square feet. The two options provided to the Ochwat's were to take their land out of the Conservation District or they could request for an amendment to the rules to allow for exceptions. Mr. Lemmo noted if the amendment to the rule is approved it would only apply to lands with lots less than 10,000 square feet within the Haena Hui partition. Mr. Lemmo recommended the Board approve Land Division's request to process the subject petition to amend Chapter 13-5, Hawaii Administrative Rules, determine that the proposed rule amendment will not impact or affect small business, authorize the forwarding of a request for a public hearing to the Governor on the proposed rule amendment and upon executive approval publish public hearing notices and appoint a representative of the Board of Land and Natural Resources as public hearing master for the proposed rule amendment's public hearing.

Max Graham attorney for the petitioner let it be known he has reviewed the language of the amendment and is in agreement. Mr. Graham went on to say this is a unique case because the partition action was filed in 1955 was not finalized until 1967 and during that time the conservation rules came into effect and his client could not qualify under non-confirming uses.

Jocelyn Garovoy, attorney for the Iron's family noted she is currently working with her clients in preparing a Conservation District Use Application to bring her client's house into compliance with Conservation rules. Ms. Garovoy feels this rule would really help her clients out with conforming to the Department's rules.

Unanimously approved as submitted (Agor/Johns).

Item E-1: New Residential Leases at Ahupua'a O'Kahana State Park, Oahu.

Dan Quinn, Administrator for State Parks gave some background information on this submittal. He started off by saying in 1985 the Board approved revocable permits for 31 families living in Kahana State Park. In 1987, the Legislature enacted Act 5, which established the State's authority to negotiate and enter into long-term leases at Kahana with these 31 families. Act 238, SLH 1988 appropriated \$1.36 million for the issuance of mortgage loans up to \$50,000 each for the construction of new houses. On July 24, 1992, the Board approved the issuance of 31 long-term residential leases at Kahana State Park. The leases called for the residents to provide 25 hours of interpretive programs each month and they were also required to construct new houses to be completed by February 15, 1996. At present five houses remain uncompleted. Subsequently the Board terminated three leases due to defaults. A lawsuit was later filed which stated that proper procedures for dispute resolution as outlined in the lease was not followed. At its March 8, 2002, meeting the Board rescinded all three of the lease forfeitures. The Division of State Parks began the dispute resolution process with the three lessee in 2002 but due to lack of performance the Board forfeited these same three leases on October 2003, May 2004 and January 2005. In 2000, State Parks worked with the Kahana residents to develop preference criteria for the selection of new leases. Mr. Quinn went into detail to explain the five preferences that would be used in determining future issuance of leases at

Kahana. However, a lottery may be used when applicants are equally qualified for the selection of lots. Mr. Quinn recommended the Board approve the preference criteria outlined in the submittal and the procedures for the issuance of new residential lease at Ahupuaa O Kahana State Park.

Martha Yent, Interpretive Program Manager let it be known the preference list was discussed at a residence meeting at which time the Kokua Committee could comment.

Moana Gorai, who is in disagreement with recommendation 4) which states “qualified applicants living in Kahana without a lease or a R.P. will be given notice to vacate the park within 60 days” asked the Board to look into the issue of those living in Kahana without permits and to also give them additional time to vacate the premises. Ms. Gorai let it be known she’s lived in Kahana prior to the issuance of the 31 long-term residential leases and was not able to obtain a lease. She asked the Board to consider herself as one of the qualified lessees for Kahana Valley.

Ms. Yent made it known they’ve extended the deadline for the acceptance of application and are still accepting applications for long-term residential leases at Kahana. Ms. Yent disclosed if Ms. Gorai applies for a lease she would be considered under preference 4).

Carlton Gorai an individual not residing in Kahana but wants to move back to Kahana testified. He indicated under the division’s preference criteria he falls under preference 3). He went on to tell the Board together with his father he’s contributed many hours of volunteer service at Kahana. Mr. Gorai asked the Board for a permit to live in Kahana so he would not have to travel quite a distance to do volunteer work.

Lena Soliven, a resident of Kahana living there under a revocable permit testified before the Board. She communicated for the last four weeks she has worked towards obtaining financing to build a home in Kahana. She informed the Board she is having problems with financing due to the terms of the lease (page 7, number 21). Ms. Soliven went on to read the specific language of the terms of the lease in question.

Member Johns indicated to staff that the wording of the document may need to be modified as State funds are no longer available and to address the fact that lessee may need to obtain conventional loans. Staff was asked to work with the Attorney General’s Office with regards to the wording of the terms of the lease document.

Leimomi Hawkins, who qualifies on preference 3) spoke of her interest in keeping her application with the Department and her wanting to move back to Kahana. She told the Board together with her husband, they can qualify for a conventional loan and can build a home within a year.

Ervin Kahala, who is living at Kahana under a revocable permit, indicated he is able to obtain a loan. Mr. Kahala noted he is doing his best to obtain a lease for Kahana. He told the Board of an incident that took place in which the Board approved him for a lease to live in Kahana. Mr. Kahala informed the Board prior to the execution of the lease he

did some work to clean up the site he'd been awarded but due to the lawsuit filed against the Department, his lease was rescinded. Mr. Kahala asked the Board if he is award a lease for Kahana he would want his lease to be for the lot he previously cleaned.

Mr. Quinn noted it was only fair that Mr. Kahala be given a permit for the lot he already cleaned.

Adela Johnson a resident (not lessee) of Kahana Valley testified. Ms. Johnson pointed out the issuance of leases for Kahana is only one aspect of Kahana. She read Senate Bill 1409, which spoke of how the Department should issue leases for Kahana. She also went on to tell the Board an advisory council should be established in Kahana and they should deal with any issues involving the area.

Member Johns left the meeting.

Dr. Jim Anthony came forward and spoke of a report by the Legislative Reference Bureau, which stated that the management of Kahana is in disarray. Dr. Anthony asked the Board to instruct staff to return to them with new language in the lease (page 7, number 21) to address the concerns stated by Ms. Soliven and also set a timetable for this and other matters to occur by. He asked the Board to further place a stay on the eviction and demolition of Ms. Gorai's home. Dr. Anthony let it be known that the criteria for preferences of obtaining a lease were not adequately discussed with the residents and the Kokua Committee. Lastly, he told the Board he feels that the agricultural and residential lease should be considered together.

Mr. Quinn committed to bring the issue of agriculture leases for discussion in front of the Board.

The Board amended the Recommendation Section as follows:

1. **Page 2, "Preferences for New Leases", Preference 1, last sentence**

"Applicants were given [60] 120 days to identify funding resources ([~~April~~ June 1)."

2. **Staff shall revisit condition 21 of the standard lease for Kahana Valley.**

Unanimously approved as amended (Martyn/DeMello).

Item K-3: Amendment to Prior Board Action on Enforcement File No. MA 05-29 Regarding Unauthorized Renovations to an Existing Single Family Residence; Unauthorized Renovations to an Existing Structure (Energy Shack); Unauthorized Construction of a Windmill and Solar Array; Unauthorized Construction/Replacement of a Hot Tub and Associated Deck and Solar Panels; Unauthorized Construction of a

Yurt; and Unauthorized Construction of a Garden Shed by Robert Gillespie, Subject Parcel TMK: (2) 1-6-004:006, Hana, Island of Maui.

Mr. Lemmo reminded the Board on January 28, 2005, the Board found Mr. Gillespie in violation of six Conservation District rules. Subsequent to the Board's action staff was provided with a copy of a DLNR approved building permit for the subject single-family residence. Mr. Lemmo noted since the landowner obtained a building permit all that was now needed is an approval of a site plan. Additionally, Mr. Lemmo asked the Board to revisit the issue of having the landowner remove the yurt, which he notes conservation rules do not allow for. Mr. Gillespie is asking the Board to remove recommendations number 5) and 8). Mr. Lemmo recommended the Board find the landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5 Hawaii Administrative Rules (HAR) in six instances by failing to obtain the appropriate approvals and is subject to the conditions listed in staff's submittal.

Blaine Kobayashi, attorney for Mr. Gillespie appeared before the Board and asked that this item be deferred to later in the meeting as his client has yet to arrive.

Item K-5: Conservation District Use Application (CDUA) OA-3207 to Construct a Telecommunication Facility Consisting of One (1) 140 Foot Radio Transmission Tower With One (1) FM Antenna, a Maximum of Two (2) Microwave Receiver Antennas, a 800 Square Foot Equipment Building and Subdivision of Land for Lease Purposes by Hawaii Public Radio, Subject Parcel TMK: (1) 2-5-019:005, Pu'u Ohia, Tantalus, Island of Oahu.

Mr. Lemmo conveyed the proposed project site is located off of Tantalus Drive about one-half mile up a gated road that currently services two existing nonconforming Verizon facilities. The project site is located near the summit of Puu Ohia at an elevation of about 1,920 feet above mean sea level. Mr. Lemmo went on to say the purpose of the proposed project is to relocate the existing Hawaii Public Radio (HPR) KIPO FM station transmitter from its present site on Palehua Ridge to the Tantalus site in order to obtain better reception. If given approval for this project HPR is also evaluating relocating their antenna at Wiliwilinui Ridge to the subject site. Mr. Lemmo indicated HPR has looked at other alternatives from fixing the problem to placing the antenna with the existing tower at Wiliwilinui Ridge but none were feasible. In addition, HPR has been in contact with Verizon for two years to co-located to the nearby Verizon tower but received a response from Verizon stating that they would be unable to accommodate HPR's request. A hearing on this issue took place in January 2005 and the majority of the comments were supportive of the proposed HPR telecommunications facility. A finding of no significant impact to the environment was published in the February 23, 2005, issue of the Environmental Notice. Mr. Lemmo indicated under normal circumstances, staff would have considered recommending approval of the proposed use however the Division of Forestry and Wildlife (DOFAW) who is the responsible land manager have gone on record in opposition to the project. DOFAW feels the subject project does not represent an appropriate use of forest reserve lands. Mr. Lemmo recommended the

Board deny the construction of a telecommunication facility and subdivision of land located at Puu'Ohia, Tantalus due to the objections of the Division of Forestry and Wildlife.

Paul Conry, Administrator of DOFAW testified before the Board that if today's submittal were for the co-location of HPR's antenna with Verizon, they would not have objected to the recommendation. Mr. Conry's decision to object to HPR's request is based on his position as the state forester and his mandate to protect and provide for forest reserves and our water supply, not to protect telecommunications facilities. Mr. Conry voiced his hope that HPR can find another site or co-located with Verizon.

Don Clegg, representing HPR let it be known their radio station is a community resource that is supported by contributions from the Hawaii community and does not receive subsidy from the State. Mr. Clegg make it clear that based on its current antenna location only fifty (50) percent of the public receives a clear transmission. He noted, if the Board does not grant a permit, thousands of residents on Oahu will be denied access to HPR. Mr. Clegg went on to say that HPR is not public operation but instead provides a service to the community. He feels by granting this application, the Board will not be setting a precedence for allowing future telecommunication requests as their request is unique enough. Mr. Clegg conveyed they are unique because, primarily they are a non-commercial radio station chartered by the Federal government to provide programming of general interest and benefit to a broad community base. Mr. Clegg confirmed if HPR's application is approved they would allow co-location at their site provided there would be no adverse impacts or costs to HPR. Mr. Clegg made it clear for the past four years HPR has tried to contact Verizon to discuss co-location with no response until very recently. Due to the lack of response by Verizon, HPR has looked elsewhere and has spend a considerable amount of money thus far. As another option to this submittal, Mr. Clegg suggested Verizon lease a portion of their lease property to HPR.

Bob Levak of the Department of Accounting and General Services (DAGS) clarified the points made by Russ Saito, State Comptroller to the Department in regards to opposing the request made by HPR. Mr. Levak made four points in his testimony. First he felt the taking of public conservation land for this private use would be an irreversible decision. He believes that HPR has not exhausted all alternatives. Secondly, he questioned whether HPR has addressed all technical alternatives available (i.e. requesting a new frequency). Third, with regards to radio frequency, Mr. Levak noted HPR use is not a passive use, which is radically different from what Verizon does. Fourth, regarding lighting of towers the final say rests with the FAA and a decision can be made between 30 and 60 days. Mr. Levak believes HPR should have asked the FAA to make a final determination with respect to lighting requirements before coming to the Board.

Tom Isan, a resident and representative of the Tantalus Community informed those present that his community held a meeting to discuss the subject application and at present they do not take a position for or against this issue but they did raise some questions which were addressed by the applicant. Mr. Isan told the Board if they grant an approval of the subject application he would like appropriate mitigations measures

addressed, as currently there are no mitigation measures in place. He believes appropriate vegetation measures need to be taken if co-location is recommended.

Pat Costales, Oahu Branch Manager of DOFAW spoke in agreement with the comments made by Paul Conry. Mr. Costales pointed out the establishment of watershed areas are to protect our water resources and that is the principle duties of the state forester therefore DOFAW the must take the position of opposing the submittal before the Board today. In closing, Mr. Costales told the Board the idea of co-location is one he supports.

The Board had some concerns with some of the questions raised by the Department of Accounting and General Services and would like them addressed. They also pointed to the letter from Verizon and asked that HPR look into pursuing co-location.

Written testimony was received from Senator Carol Fukunaga, Russ Saito, John Douglas and Don Clegg.

Motion to Defer.

Unanimously approved to defer by the remaining Board members (Yamamura/Martyn).

Item J-1: Requesting Final Approval of Amendments to Chapter 13-242, Hawaii Administrative Rules, as They Relate to Cruise Ship Fee Increases and Requesting Authorization to Submit the Approved Rule to the Governor for Final Adoption.

Motion to Withdraw.

Unanimously approved to withdraw by the remaining Board members (Martyn/Yamamura).

Item J-2: Status on revocable permit to Waikiki Yacht Club, approved March 11, 2005.

Richard Rice, Administrator for the Division of Boating and Ocean Recreation (DOBOR) informed the Board he does not have a written report on the status of the revocable permit issued to the Waikiki Yacht Club but confirmed everything is flowing smoothly.

No Action.

Item K-1: Time Extension Request for Conservation District Use Permit (CDUP) MA-3102 for a Wind Farm Project by Hawaii Wind Energy, LLC, 1088 Bishop Street, Suite 1003, Honolulu, Hawaii, Subject Parcel TMK: (2) 4-8-01:por. 001, Ukumehame, Island of Maui.

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item K-4: Third Time Extension Request for Conservation District Use Permit (CDUP) HA-2968 for Pali K-Ranch, LLC, Christopher Norrie, Managing Member, 845 Bellevue Place E, #101, Seattle, Washington, Subject Parcel TMK: (3) 8-1-10:005, South Kona, Island of Hawaii.

Unanimously approved as submitted by the remaining Board members (DeMello/Martyn).

Item K-3: Amendment to Prior Board Action on Enforcement File No. MA 05-29 Regarding Unauthorized Renovations to an Existing Single Family Residence; Unauthorized Renovations to an Existing Structure (Energy Shack); Unauthorized Construction of a Windmill and Solar Array; Unauthorized Construction/Replacement of a Hot Tub and Associated Deck and Solar Panels; Unauthorized Construction of a Yurt; and Unauthorized Construction of a Garden Shed by Robert Gillespie, Subject Parcel TMK: (2) 1-6-004:006, Hana, Island of Maui.

(continued from an earlier in the meeting)

Blaine Kobayashi, representing the landowner, Mr. Gillespie came forward to testify. Mr. Kobayashi acknowledged his client does not take issue with staff's analysis that he violated the provisions of Chapter 183 HRS and Chapter 13-5, HAR by constructing a windmill and solar array, construction of a yurt, construction of a garden shed and certain improvements made to the hot tub in 1999. However, Mr. Gillespie does take issue with the alleged violations concerning the repairs and maintenance done to the home and the energy shack. With regards to the repairs done to the home, Mr. Kobayashi stated their position is that Mr. Gillespie has not committed any violations with respect to the repairs and maintenance done to the home. Mr. Kobayashi pointed out on Mr. Gillespie's website that the home was "remolded" which was not true. Mr. Gillespie merely repaired the shake roof and painted the home. At no time where walls removed or the square footage of the home altered. Regarding the energy shack, Mr. Kobayashi confirmed Mr. Gillespie merely removed the diesel generators from the energy shack and similarly to the home the square footage was never altered. With respect to staff's recommendation that Mr. Gillespie record this enforcement action as a part of the deed, Mr. Kobayashi disagrees with this request.

When questioned by the Board as to the request to remove the yurt, Mr. Kobayashi stated Mr. Gillespie is willing to remove the yurt.

The Board amended the Recommendation Section as follows:

1. Recommendation 1)

“The alleged landowner violated the provisions of Chapter 183 C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in [~~six~~] four instances by failing to obtain the appropriate approvals for the [~~renovations to an existing Single Family Residence;~~] renovations to an existing structure (Energy Shack);; construction of a windmill and a solar array; [~~construction/replacement of a hot tub and associated deck and energy source;~~] construction of a yurt and the construction of a garden shed within the Conservation District. The alleged is fined a total of [~~\$6,000~~] \$4,000 for [~~six~~] four Conservation District violations.”

2. Recommendation 3)

“The alleged/landowner shall pay all fines (total [~~\$6,500.00~~] \$4,500.00) within sixty (60) days of the date of the Board’s action;

3. Remove Recommendation 8)

~~“The landowner shall provide documentation (e.g. book and page or document number0) that this enforcement action has been placed in recordable form as a part of the deed instrument within 60 days of Board action.”~~

Unanimously approved as amended by the remaining Board members (Yamamura/DeMello).

Item E-3: Approval to Award a One-Year Revocable Permit for the Wailua Marina Restaurant Concession to Wailua Marina Restaurant, Inc. and Pursue a Public Sealed Bid Process for a 5-Year Lease to the Highest Bidder, Wailua River State Park, Kauai.

The Board amended the Recommendation Section by adding the following:

“Authorize the Chairperson to amend/modify the amount of the minimum investment if necessary.”

Unanimously approved as amended by the remaining Board members (Agor/Martyn).

Item E-2: Request to Amend Board Submittal of December 10, 2004, (Item E-4) Request for Approval to Lease State Park Land at Kalihi Valley State Park Reserve, Kalihi, Oahu.

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item F-2: Request for Approval to Amend/Extend Two Agreements with the University of Hawaii (UH).

Motion to Withdraw

Unanimously approved to withdraw by the remaining Board members (Yamamura/Martyn).

Item F-1: Request for Approval to Amend Eight (8) Project Agreements with the Research Corporation of the University of Hawaii for FY06 for the Following Projects: Coral Reef Initiative (Contract No. 49090), Coastal Stock Enhancement (Contract No. 49820), Public Fishing Areas (Contract No. 50027), Stream/Estuarine Studies (Contract No. 51059), Marine Population Survey (Contract No. 51058), Ulua Tagging (Contract No. 52851), and Finfish Broodstock and Larvae Culture (Contract No. 52994), and Hawaii Marine Recreational Fishing Survey (Contract No. 48518).

The Board amended the date of the submittal to read “April 1, [~~2004~~] 2005.

Unanimously approved as amended by the remaining Board members (Yamamura/Martyn).

Item C-1: Request Approval of Contract with Neaulani Inc. to Participate in the State Forest Stewardship Program.

Mr. Conry noted the only change in the terms of the contract was the ability for the partner to rollover any unused funds from one year to the next.

Unanimously approved as submitted by the remaining Board members (DeMello/Martyn).

Item D-10: Consent to Assign General Lease No. S-5053, Steve Panfiglio, Assignor, to Ricky Watanabe, Assignee, Lot 5, Puu Ka Pele Park Lots, Waimea, Kauai, TMK: (4) 1-4-02:32.

The Board amended

- 1. The assignor to “Steve Panfillio, Trustee under the Revocable Trust of Steve Panfiglio dated July 26, 1994.”**
- 2. Add a new Recommendation 3) to read**
“Assignee Ricky Watanabe agrees to pay lease rental \$2,520.00, \$13.92 water charges, acquire insurance and secure a performance bond.”
- 3. Renumber previous Recommendation 3) to Recommendation 4).**

Unanimously approved as amended by the remaining Board members (Agor/Martyn).

- Item D-1: Set Aside to Department of Transportation, Highways Division for Highway Purposes and Issuance of a Construction Right-of-Entry, Lahaina, Maui, TMK: (2) 4-5-21:por 22.**
- Item D-3: Grant of Perpetual, Non-Exclusive Easement to MHP Kuroda Partnership, LLLP, for Access and Utility Purposes over and across State-owned land at Aiea, Ewa, Oahu, TMK: (1) 9-9-044:022.**
- Item D-4: Cancellation of Revocable Permit No. S-7189 to Palekoki Ranch, Inc. and Issuance of Month-to-Month Revocable Permit to Raymond Lorenzo for Pasture Purposes; Kaaoo, Ouhi, Pakiloo and Kalua, Hamakua, Hawaii, TMK: (3) 4-5-01:07 & 13.**
- Item D-8: Cancellation of Revocable Permit No. S-7316, and Issuance of Revocable Permit to Thomas T. Takatsuki and Dennis S. Takatsuki, Wailua, Kauai, TMK: (4) 4-1-01:12.**
- Item D-12: Grant of a Term Non-Exclusive Easement for Seawall and Reclaimed (Filled) Land to Frank and Abigail Medrano, Kahaluu, Koolaupoko, Oahu, TMK: (1) 4-7-30:15 seaward.**
- Item D-13: Rescind Prior Board Action of December 12, 2004, Agenda Item D-8, Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Verizon Hawaii Inc. for Utility Purposes and Cancellation of Revocable Permit No. 497 to Hawaiian Electric Company, Ltd. and Hawaiian Telephone Co., Waimanalo, Koolaupoko, Oahu, TMK: 4-1-09:01.**
- Item D-14: Cancellation of Governor's Executive Order No. 2781 and Reset Aside to County of Maui for Social Service Programs Purposes, Makawao, Maui, TMK: (2) 2-5-4:14.**

Unanimously approved as submitted by the remaining Board members (Martyn/DeMello).

- Item L-1: Appointment of Kona Soil and Water Conservation District Director.**
- Item M-1: Issuance of a Direct Lease to Mokulele Flight Service, Inc., at Kona International Airport at Keahole.**
- Item M-2: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Consistent Uses.**

- Item M-3: Issuance of Revocable Permit to Kapalua Land Company, Ltd., for Inconsistent Use at Kapalua Airport.**
- Item M-4: Issuance of Lease to Federal Aviation Administration (FAA), United States of America (USA) at Honolulu International Airport.**
- Item M-5: Issuance of Replacement Lease to U.S. Federal Aviation Administration at Hilo International Airport.**
- Item M-6: Consent to Assignment of Harbor Lease No. H-98-2 Adjacent to Pier 32, Iwilei, Honolulu Harbor, Oahu.**

Unanimously approved as submitted by the remaining Board members (Martyn/DeMello).

There being no further business, Chairperson Young adjourned the meeting at 12:24 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources